

**2005 CONSULTATIVE COMMISSION  
TO PROPOSE THE REVISION OF THE 1987 CONSTITUTION  
Committee on Civil Service/Accountability of Public Officers  
Minutes of the Meeting  
5 December 2005**

**ATTENDANCE**

Commissioner Jurado  
Commissioner Vilar

**PROCEEDINGS**

Commissioner Vilar and Commissioner Jurado reviewed the documents that they have on hand for this meeting.

The documents distributed by the PMS were as follows:

- 1) Committee Proposals to Amend Article IX-B (Civil Service Commission) and XI (Accountability of Public Officials)
- 2) Proposed Article IX. Constitutional Commissions i.e. B. The Civil Service Commission
- 3) December 4 Article of Carmen Pedrosa's Column From a Distance, "An Honorable Exit for the Senate", Philippine Star

The UP Lawyers Group was also in attendance including lawyers Ebenezer Cordova, Aman Y. Enconado and Anna Francesca M. Limbo.

The UP Lawyers Group submitted documents of two resolutions titled:

- 1) Committee on Civil Service and Accountability of Public officers as the First
  - i. Resolution and

2) Committee on Accountability of Public Officers as Second Resolution

3) Downloaded data from the internet on selected government owned and controlled corporations Financial Reports. According to Attorney Cordova, their group had difficulty procuring this document from concerned government-owned and controlled corporations.

The UP Group prepared a presentation entitled:

**In The Matter of Subjecting All Government Owned and Controlled Corporations under the Civil Service**

The Commissioners present used up the rest of the time reviewing the aforementioned documents.

At about 11:50 am, the Commissioners in attendance began informal discussions on the agenda. Commissioner Vilar noted that in the case of the National Housing Authority, they can afford to give bonus and privileges when in the financial statement it is indicated that they are on losing ground.

**PROPOSED SECTION 1  
OF ARTICLE XI**

According to lawyer Cordova, a guest presenter from the UP Law Office, the proposed resolution *...to subject GOCCs to the same rules and regulations of the Civil Service Commission* is not a noble provision.

The lawyer recalled that during the discussions on amending the Constitution in 1970, Father Bernas stated the rationale for the inclusion of the said GOCCs as custodians of the people's property and should be accountable to the people, regardless of whether or not these GOCCs have charters. Also, the lawyer noted that Father Bernas was concerned that GOCCs were becoming cost centers for the government and draining the resources of the government.

Thus, Attorney Cordova pointed out, the purpose of including the GOCCs under the Civil Service is to avoid an absurd situation where a mere instrumentality of the government can just create a corporation in order to avoid accountability imposed by the public rights.

The lawyer mentioned the applicability of the proposed provision subjecting all government owned and controlled corporations under the Civil Service relative to the case of the Trade Union Congress of the Philippines and Allied Services versus the National Housing Corporation.

Attorney Cordova proposed the addition of the following provisions: *The directors and trustees who represent the interests of the state in government-owned or controlled corporations as well as persons of public official position shall be considered as public officers.*

Chairman Vilar pointed out that there was an attempt to correct the matter during the Marcos Administration but apparently this had been relegated by the 1987 regime, and that the Letter of Instructions (LOI) issued by President Marcos was completely ignored. As for the Chair, the present practice of corporate spin-offs from a mother corporation and putting all its assets

within the ambit of the corporations' officers, has created unnecessary wastages. The Chair said that the rationale for this proposal is to zero out some of the causes of the drain of the country's budget.

According to Commissioner Jurado, government-owned and controlled corporations were created because of the expectation that these would be able to fund their own operations from the income generated from services rendered. Further, he believed that if the criterion of being financially viable is not satisfied, then it shall be abolished.

Lawyer Cordova stated that the government acts through its public employees and officers, however, only public officers are mentioned accountable in the Constitution.

The lawyer stated that it is imperative to limit the powers wielded by the officers of government-owned and controlled corporations because of primacy of the positions.

Attorney Cordova reiterated that the main distinction between public office and public employment is the exercise of sovereign functions. However, the lawyer added that the distinction of consequences of a non-sovereign function could also be detrimental to the public. He stressed that investment in certain business enterprise may not be a sovereign function, however, the effects should be significant to public interest.

Attorney Cordova underscored that the main problem is that only the public officers, and not all public employees, are covered in the Constitution. Hence, GOCC officials can enjoy the money of the government without the accountability of being public officers.

The Chair commented that the flawed idea is one of the defects of the 1935 Constitution, and could have been prohibited in the 1973 Constitution; but was allowed to continue up to the present which resulted in the issuance of the Presidential Decree and the LOI.

With these, the distinction between public officers and public employees are proposed to be clearly defined under the Accountability of Public Officers, Section 1 of Article XI.

Commissioner Jurado averred that the government must provide clear accountabilities for its public officers. Chairman Vilar requested a copy of the Letter of Instruction by then President Marcos on government-owned and controlled corporations so that this could be incorporated into the deliberations.

Commissioner Jurado proposed the preparation of a matrix which will state the proposed amendments incorporated into the present provision, and the annotations corresponding to the proposed amendments. He further expressed the need to distinguish between the words added and the words deleted in the proposed amendments so that all words added and deleted are properly documented.

Commissioner Vilar commented how the Presidential Decree on government-owned and controlled corporations done by then President Marcos defined everything in one provision.

### **AMENDMENTS ON SECTIONS 1-3**

Commissioner Jurado proposed the deletion of the phrase *with original charters* in Section 2 as documented in the proposed amendments column as this had become the basis used by government-owned and controlled corporations to consider itself not a part of the civil service. Without this phrase,

its employees would also be categorized as public service employees. He also emphasized how Section 1 of the proposed amendments would therefore become Section 3 under the first column of the matrix, and that the first column should replicate the present Constitution. Moreover, he proposed the inclusion of a provision outlining an additional function of the Civil Service making it easy for the public to understand its rules, which is free from duplication, and from being outmoded.

The Chair asserted that Civil Service rules must be simple, easy to understand by the public, and should have no ambiguity whatsoever for people to make their own interpretation. Commissioner Jurado tasked Attorney Cordova to include this, the general idea being that anybody who wants to be familiar with Civil Service rules may be able to do so; that even the ordinary citizen can understand the rules. Problems emerge when the *masa* comprehend the rules one way, and the government staff, in another way.

### **PREPARATION OF THE MATRIX**

Commissioner Jurado also reiterated how column 1 in the matrix should just replicate what is in the 1987 Constitution without disturbing it, which was duly seconded by the Chair.

Chairman Vilar said that Section 1 should be moved to Paragraph 1, and that Section 1 must have a subsection. The proposed amendments in Section 2 should be included in subparagraph 1.

Commissioner Jurado stated that the challenge was how to consolidate proposed amendments into the current provisions. He then enumerated the following: for Section 1, the Constitutional provisions only need to be copied; Section 1 becomes Section 3, and the others are retained. Only the

location is to be changed with the same wordings.

Attorney Cordova stated that all proposed amendments concern only Section 2.

Chairman Vilar told lawyer Cordova that Commissioner Jurado was only formulating the changes now. And Commissioner Jurado cited the difficulty in changing the sequence of the sections.

Chairman Vilar requested the PMS staff if he could have a copy of the Letter of Instruction by the late President Marcos.

Commissioner Jurado mentioned that the first Article should define the mandate of the Civil Service. He emphasized how everything must be given proper reference. He commented that many of the parts of the Constitution he had seen had no terms of reference. He explained why a Terms of Reference should come first as this sets the framework for the job. He said that due to this gap, the orientation of the rules came out as administrative rather than substantive. He further stated that rules should begin with a framework, then proper placement so it becomes logical and consistent.

Commissioner Jurado expressed the desire of the Committee to abolish government-owned and controlled corporations unless they pass the criteria of viability.

Finally, Commissioners Vilar and Jurado reiterated that Civil Service rules must include the eradication of red tape; must be easily implementable and should be relevant. Both also expressed the need to include a provision on compensation in a separate Section.

## **FINAL ACTIONS BY THE COMMITTEE**

Letter of Instructions No. 1520 issued by Malacanang was distributed by the PMS.

Section 3 of the Constitution was mentioned as an integral aspect of civil service.

Commissioner Jurado advised those concerned to highlight or italicize to mark a phrase deleted by the Committee, and similarly, to use a bold font for a phrase added by the Committee.

Commissioner Vilar asked the Secretariat to distribute copies of the Concept of Judiciary to those interested. He said this is an important document especially those following up on government-owned and controlled corporations.

Commissioner Vilar also reminded the Secretariat of another Letter of Instruction from Malacañang which could be useful for the Civil Service Committee.

Both Commissioners Vilar and Jurado believed that the committee meetings were very enlightening and had contributed significantly to the Commission.

The Body agreed not to take up the proposal of Commissioner Villanueva on the presidential form anymore.

The Committee agreed to finalize the draft of the provisions on Civil Service and Accountability of Public Officers in Malacañang the following day. Lawyer Cordova of the UP Law group volunteered to coordinate the meeting with PMS.

## **ADJOURNMENT OF MEETING**

Upon suggestion of the Chair, the meeting was adjourned.

*It was 2:25 p.m.*